

## REMARKS

The Office objects to the abstract and requests modification of line 1. The Applicant has deleted the specified language and modified the abstract. The Applicant believes that the Abstract is now in acceptable form

The Office rejects claims 1-2 and 5 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,254,063 to House, Jr. The Applicant respectfully disagrees and traverses the rejection.

The House reference is directed to an exercise device 10 “compris[ing] an elongated section member 16 formed by left section 12, right section 13 and central yoke section 11” (col. 3, lines 19- 22), the central section being connected to the “two side sections” (col. 2, line 44). Weight elements, shown in Figures 1A and 1B are mounted on each of the side sections. Col. 2, lines 46-47. The overall length of the device is about 84 inches, wherein the two side sections are about 30 inches in length. Col. 2, line 45. The weights sections are about 12 inches. Col. 2, line 51-52.

The Office states that the House reference discloses a frame (fig. 1) and supporting members (col. 1, lines 17-18) coupled to the frame. It further states that the members are adjustable (fig. 1a-1b). The Applicant respectfully disagrees and contends that House fails to meet all the limitations of claim 1. For instance, column 1, lines 17-18 discusses tubular exercise “bars”. This, however, does not support the limitation of a “supporting element” in claim 1. Rather it is similar to the elongated section member 16 of the House apparatus.

Further, the Office references Figures 1a and 1b to support its contention that the members are adjustable. Figures 1a and 1b, however, illustrate that the members are weight elements 15, 15’, which are “slidably positionable along elongated sections 12 and 13”. Col. 3, lines 15-16. These are not supporting members. Indeed, there is no suggestion or teaching that the “weight elements” are supporting members. Indeed, the weight sections are only 12 inches long on a device that is about 42 inches on one side (84 inches in total). The figure illustrates that the weights are positioned nearer the end of the side section than in the middle and can be slidably moved along a portion of the side section. They are not, however, supporting members.

Since the elongated member 16 comprises the frame, the elongated member cannot also be the supporting member. Indeed, the background of House clearly states that the House apparatus overcomes the difficulties of the prior art devices (longitudinal bars having a concave yoke midsection and having weight bars affixed

along either side of the yoke col. 1, lines 23-25) by providing for a “quickly varied” or adjustable device, i.e., adjustable weights (col. 1, lines 30-38). As such, the House reference fails to teach “supporting members, wherein the supporting members are coupled to the frame and positioned to rest on the shoulders of a user during use.” Thus, the House reference fails to anticipate claim 1.

To further support the Applicant’s contention that the elongated member 16, which includes the left section 12 and right 13, is the frame is the Office’s rejection of claim 5. The Office states that the House reference teaches a frame comprising an arc and linear member. For claim 5 to be distinct and comport with claim differentiation, the linear members must be distinct from the supporting members. Further, the arc and linear member do not “form a semi-oval shape” as required by the claim. The arc and linear member form a straight edge coupled to a small arc, namely, the yoke member. As all the limitations of claim 1 are not met by the House reference, dependent claims 2 and 5 cannot be anticipated by the House reference.

The Office further rejects claims 1-2, 5-6 and 9-14 under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 6,368,257 to Kaplan et al. The Applicant respectfully disagrees and traverses this rejection.

The Kaplan apparatus is directed to an isotonic exercise assembly 10. The exercise assembly is coupled to a mounting assembly 12 (Figures 4 and 5). The mounting assembly 12 “includes a harness defined by a plurality of straps 14 and 16” adjustably attached to a front support plate 18 (col. 5, lines 56-61) and a back support plate 26 (col. 6, lines 5-6). Further, the harness includes a second plurality of straps 20, 22 also coupled to the front and back support plates 18, 26. A base 30 couples the front plate 18 of the mounting assembly to the exercise assembly 10. The base 30 is fixedly secured to the front support plate 18 or alternatively is removably attached in supporting relation on the front support plate 18. Col. 6, lines 23-29.

The configuration of Kaplan fails to meet the limitations of claim 1. In particular, the Kaplan apparatus fails to meet supporting members “coupled to the frame”. The straps 14, 16 in Kaplan are not coupled to the exercise assembly 10, but rather, as depicted in Figures 4 and 5, the straps 14 and 16 are coupled to the mounting assembly 12. Indeed, the exercise assembly 10 can be completely separable from the mounting assembly. Further, the exercise assembly 10 could be used without the mounting assembly 12 as a user would only need to press the base 30 against his chest, wrap his arms along the pair of arms 34 and 36 and hold the handles

40 at the end of each arm. As the Kaplan apparatus fails to meet all of the limitations of claim 1, it fails to anticipate claim 1. As claims 2, 5-6 and 9-14 depend from claim 1, these claims are not anticipated either.

Further, the Kaplan reference fails to teach claims 5-6. In particular, claim 5 requires that the arc and linear member “form a semi-oval shape”. The coupling of the linear member and the arc member, at most, form a hook or “J” shape. Further, claim 6 requires the “first end [of the supporting member] being coupled to the arc member and the second end [of the supporting member] being coupled to the linear member.” The straps 14, 16 are coupled to the front and back plates. They are *not* coupled to the linear member of the exercise assembly 10 or the arc member, namely, arm 34 or 36. Thus, the Kaplan reference further fails to meet the limitations of claims 5 and 6.

Further still, claims 12 and 14 are not met as Kaplan fails to teach supporting members comprising a first end and a second end, “wherein the first end is coupled to one of the open ends of the frame and the second end is coupled to the closed portion of the oval.” As stated above, the straps are coupled to the front and back plates, and further, do not couple to the arc member. Additionally, claim 14 requires “the arc member further comprises a hinge member, and the linear member further comprises a hinge member”. Figures 2-3 illustrate a hinge coupling the base 30 with the arm 34 and a hinge coupling the base 30 with the arm 36. This does not create a hinge member of the arc and a hinge member of the linear member. Further still, claim 14 requires “the hinge member of the arc member *and* the hinge member of the linear member are aligned such that the frame can be folded”. These hinges are not aligned with each other so as to fold the frame, nor can it be interpreted that each is aligned with itself so as to fold the frame. This is an inappropriate and strained reading of Kaplan.

As stated above, the Kaplan apparatus fails to meet all of the limitations of claim 1, and thus fails to anticipate claim 1. Claims 2, 5-6 and 9-14 depend from claim 1, and thus, are not anticipated based on the arguments set forth above for claim 1 and for claims 5-6, 12 and 14.

Finally, the Office rejects claims 1-4, 9 and 13 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,770,013 to Stillinger. The Applicant respectfully disagrees and traverses this rejection.

The Stillinger reference is directed to a device for selectively applying tractive forces to a user's back. The device includes a body 12 coupled to a lower-extremity engagement structure 14 and a transmitting portion 16. Col. 2, lines 64-66. The lower-extremity engagement structure 14 is "adapted to receive and support a user's lower extremities, such as the user's feet, ankles and/or lower legs." Col. 3, lines 15-18.

The Office states that the Stillinger apparatus discloses a frame 12 and supporting members 14 coupled to the frame. The Office further states that the members 14 are adjustable and that the frame has a hinge mechanism for folding.

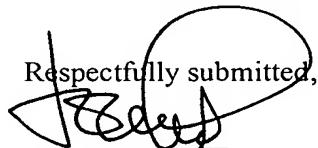
The Applicant contends that the Stillinger apparatus fails to teach all of the limitations of claim 1. In particular, claim 1 requires that the "the supporting members are ... positioned to rest on the shoulders of a user during use." As discussed in the disclosure and illustrated in Figure 22, the "supporting members", namely, the lower-extremity engagement structure 14, is "adapted to receive and support a user's lower extremities, such as the *user's feet, ankles and/or lower legs.*" Col. 3, lines 15-18 (emphasis added). The Stillinger apparatus does not rest on the user's shoulder during use, nor is it ever positioned or intended to be positioned, near the shoulder. Thus, Stillinger fails to meet this limitation in claim 1. As the Stillinger reference fails to teach all of the limitations of claim 1, it does not anticipate claim 1. With regard to claim 9, there is no suggestion or teaching that the extremity engagement structure is "flexible". Although the structure is movable, there is no indication that it is flexible.

As the Stillinge reference fails to meet all of the limitations of claim 1, the Stillinger reference fails to anticipate claim 1. Claims 2-4, 9 and 13 depend from claim 1. As claim 1 is not anticipated by the Stillinger reference, the dependent claims are not anticipated.

The Examiner has stated that claims 7 and 8 are allowable subject matter. The Applicant thanks the Examiner. The Applicant believes that claim 1 is allowable as currently written, and thus, has not yet rewritten claims 7 and 8 in independent form. However, new claim 15 is a combination of claims 1, 4 and 7, which is substantially similar to claim 7, excepting that the cross segments are not releasably coupled to the frame, and the supporting members are not positioned to rest on the shoulders of the user during use. Claim 16 is directed to a fitting releasably coupled to the cross segment. New claim 17 is directed to an exercise apparatus having cross segments

configured to receive a weight. Claims 18 and 19 depend from claim 17. No new matter has been added. Claims 8 and 12 have been amended to correct proper dependency and for clarification of terms only and not for patentability purposes.

The Applicant believes that the claims are in condition for allowance, and respectfully requests that the Office pass these claims to allowance.

Respectfully submitted,  
  
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